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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,801	05/26/2000	Kenneth Kiron	3001 P 009	8044

7590

02/13/2003

Edward L Bishop  
Wallenstein & Wagner Ltd  
311 South Wacker Drive 53rd Floor  
Chicago, IL 60606-6622

EXAMINER

AKERS, GEOFFREY R

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application 09/S 79801	Applicant(s) KIRON	
	Examiner Akers, G	Art Unit 3624	Confirmation No. 1

- The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address -

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- ☒ Responsive to communication(s) filed on 12/30/02
- ☐ This action is FINAL. ☒ This action is non-final.
- ☐ Since this application is in condition for allowance except for the formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- ☒ Claim(s) 53, 75-89 is/are pending in this application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 53, 75-89 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved or ☐ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are ☐ accepted or ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d) or (f).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \*Certified copies not received:
- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- ☐ The translation of the foreign language provisional application has been received.
- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Response to Continued Prosecution Application(CPA)*

1. This action is issued in response to applicant's Continued Prosecution Application(CPA)(Paper #6) filed 12/30/02.
2. No claims were amended. None were added. None were cancelled.
3. Claims 53, 75-89 are pending.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 53,75-76,78-81,83-84 are rejected under 35 USC 103(a) as unpatentable over Luskin(US Pat. No: 5,812,987).
6. As per claims 53,80 Luskin teaches a method of identifying a group of securities(Fig 7/701)(Fig 3/110) and separating the group of securities into a sector comprising a subset of the group of securites within a similar industry(Abstract) and creating an open end fund having a number of outstanding shares (col 2 lines 29-31) and comprising securities of the sector(col 2 lines 32-34) and changing the securities comprising the sector(Fig 7/711) and changing the

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securities comprising the fund in response to changing the securities comprising the sector(Fig 7/715) and trading the fund on a real time determined price on an exchange(col 8 lines 48-58) and outputting the results in readable form. Luskin teaches a trade list(col 7 line 65-col 8 line 7). It would have been obvious to one skilled in the art at the time of the invention that trading assets on the exchange by a seller entails producing results(quotes) that are readable. The motivation for this is to permit one to make decisions on optimizing an investment portfolio with quote data information.

7. As per claims 75,81 Luskin teaches the method of claim 53,80 respectively further comprising the step of identifying a universe of securities registered within a country and including these securities (col 8 lines 48-50).

8. As per claim 76 Luskin teaches the method according to claim 53 of listing the shares on an exchange(col 4 lines 19-23)(col 7 lines 27-29).

9. As per claims 78,83 Luskin teaches the method of claims 53,80 respectively further comprising the step of calculating the positions of shareholders of the outstanding shares(Fig 6/710/900) in combination with(Fig 9).

10. As per claims 79,84 Luskin teaches the method of claims 53,80 respectively further comprising the step of electronically trading the shares(col 7 lines 35-38).

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11. Claims 77, 82 are rejected under 35 USC 103(a) as unpatentable over Luskin(US Pat. No: 5,812,987) in view of Daughterty(US Pat. No: 5,557,517).

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12. As per claims 77,82 Luskin teaches the method according to claims 53, 80 respectively. Luskin fails to teach the step of listing on an exchange a derivative having a price related to a real time price. Daughterty teaches this(Abstract)(col 4 lines 1-25)(col 4 lines 50-58).It would have been obvious to one skilled in the art at the time of the invention to combine Luskin in view of Daughterty to teach the above. The motivation to combine is to teach a method of determining the price of a derivative(expirationless) option as enunciated by Daughterty(col 3 lines 24-27).

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 85-89 are rejected under 35 USC 102(b) as anticipated by Luskin(US Pat. No: 5,812,987).

15. As per claims 85,87,89 Luskin teaches an open end fund comprising a portfolio comprising securities that are within a similar industry and a subset of a group where the securities within the portfolio are weighted and the portfolio is changeable in response to a change in the identified group(Fig 7/711/713/705/703/715)(Fig 6/904/902/900) and a plurality of shares outstanding of the fund listed and tradable on the exchange at a price related to the price of the securities in the portfolio(col 4 lines 19-23)(col 7 lines 27-29) and an electronic system that displays in real time

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the price that the securities were traded on the exchange(col 4 lines 19-23)(col 7 lines 27-29)(col 7 lines 35-38).

16. As per claims 86,88 Luskin teaches the method of claims 85,87 respectively further comprising the step of identifying a universe of securities registered within a country (col 8 lines 48-50).

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***Conclusion***

17. **THIS ACTION IS MADE NON-FINAL.**

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18. Any questions concerning this communication should be addressed to the examiner of record, Dr. Geoffrey Akers, P.E., who can be reached between 6:30 AM and 5:00 PM Monday through Friday at 703-306-5844. If attempts to contact the examiner are unsuccessful, the examiner's superior, Mr. Vincent Millin, SPE, may be telephoned at (703)-308-1065.

The fax number for Formal or Official faxes and Draft or Informal faxes to Technology Center 3600 or this Art Unit is (703)-872-9326 or 9327. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)-308-1113.

GRA

  
~~February 12, 2003~~